

Fairfax Public Hearing

**REAL ESTATE BOARD
PUBLIC HEARING ON MANAGEMENT OF COMMON
INTEREST COMMUNITIES**

**Wednesday, July 6, 2005
7:00 p.m.**

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P R O C E E D I N G S

MR. PERRY: Good evening. My name is Tom Perry.
I'm the Property Registration Administrator for the

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Virginia Real Estate Board. This is a public hearing held at the Fairfax County Government Center in conference rooms 4 and 5, located at 12000 Government Center Parkway in Fairfax, Virginia. This hearing is being held to receive public comment to study the adequacy of training of and disclosure of financial information to consumers by financially compensated professional managers of condominium associations, property owners' associations, and other similar common interest communities.

House Joint Resolution 686 from the 2005 Session of the Virginia General Assembly requested the Virginia Real Estate Board to conduct this study. In conducting this study, the Board will analyze the adequacy of training of financially compensated professional association managers in fair housing compliance, receivership, account management, real estate law generally and common interest communities and other matters that may arise.

The staff of the Department of Professional and Occupational Regulation will prepare a report for the Board's consideration summarizing all public comment received. The Board will submit to the Governor and the General Assembly an executive summary and a report of its findings and recommendations for consideration during the 2006 Session of the General Assembly.

We do have some rules for this hearing. Comments will be received from any member of the public, and initial comments will be limited to a maximum of five minutes, depending on the number of individuals who wish to speak. If you have not signed up to speak, and you wish to give testimony today, please sign your name on the sign up sheet at this time, or as I said earlier, any time during the meeting will be fine.

Speakers may ask questions or request clarification of statements. However, this is not, and I repeat, not the proper forum for questions. If you have a question for the Board, please forward it in writing to the Board.

Any speaker who wishes to provide a written statement in addition to his oral testimony or in lieu of oral testimony may do so until July 29, 2005. And before we have our first speaker, I would also like to point out material that I have on the table over there, in addition to the sign-up sheets. I have a copy of the House Joint Resolution 686 over there in case anyone would like to have a copy of that.

I also have a copy of the survey that we sent out asking questions concerning financially compensated professional managers, in the hopes that we could get some information. If you did not receive one of these, or if your association did not receive one of these, please feel free to take as many as you would like and please fill one of these out and return it to us by July 29th.

If we do run out, they are -- copies can be found on our Web site at our agency. In addition, I do have copies of a flier concerning the community association liaison. Her name is Cynthia Shrier, and this is very good information if you do not have a copy of such and if you are not familiar with Cynthia. I think that's all I need.

Let me go over here and get the list. First speaker is David Mercer.

MR. MERCER: I was the last to sign up.

MR. PERRY: Well, it was the short list. I started with the short list, and again, I would like to say, make sure you spell your name to make sure we get a proper spelling of it.

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MR. MERCER: You caught me a little bit off guard, because I came in last and signed up, but I'm delighted to go first. Sorry, folks that got here on time.

Mr. Chairman of this meeting and this hearing, my name is David Mercer, and I'm here -- I hesitated a minute when I looked at the sign-in sheet, because it asked for the affiliation, and I'm here tonight speaking on behalf of a number of lawyers and law firms in Northern Virginia who practice in this area of the law, Chadwick Washington & Walters; Fagelson Schonberger Payne & Deichmeister; Hartsoe & Mansfield; the Law Office of Bill Marr; Law Offices of Dolson, McCandlish & Lillard; Whiteford Taylor & Preston; Reed Smith; Rees, Broome & Diaz; Segan Mason & Mason; Troutman Sanders, which is the firm that I am with; and Walsh Colucci & Stackhouse.

I'm a partner at Troutman Sanders. My partner in crime, Pia Trigiani, who is also a partner at Troutman, Sanders is here with me, and she has given me some remarks that the group has agreed upon. I want to, at the outset, say that we're going to submit -- this group of lawyers will be submitting a more detailed list of comments and concerns about the study and some recommendations.

One of the issues that I would like the hearing officers to focus on is the difficulty that I think we have that we're facing. It's an enormous balancing task to try to balance legislative needs in an area with so many diverse interests and so many diverse disciplines involved. And I believe that there is a misunderstanding of what a community association is, and for years, and I think unfortunately, continuing, community associations are categorized as a quasi-public governmental entity, and that is not the case. They are private entities, oftentimes incorporated, non-stock corporations, but clearly, they are not governmental agencies.

One of the points that I shared with the group is that if you were to treat community associations as governmental agencies and hold them to that standard of disclosure, for example, of how they conduct their business, how they go about providing their services, it would only be fair to provide them with the same level of sovereign immunity that local governments are afforded in the analysis of how they provide those services.

We, as citizens of the Commonwealth, if we are not happy with the way services have been provided by a governmental entity, can't sue them without the government's permission. It's called sovereign immunity. So I think it's a huge mistake for people to make in saying that an association, a community association, is like a governmental entity. It is somewhat like a governmental entity, but it possesses more characteristics of a private venture.

The other point that I think is oftentimes overlooked, and it's -- I say these things recognizing it's a difficult task. One size does not fit all. There are community associations that Pia and I work with in Virginia that are as large as 7,000 homes. There are larger associations in Virginia, but we can speak specifically to the ones that we work with.

Clearly, how they can afford to accommodate legislative needs and requirements that might be perceived as necessary for protective features for the citizens of their group, a two-unit condominium project could not. And unfortunately, the legislature tends to disregard the need to customize the legislative proposals and recognize

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that one size does not fit all. Community associations are not perfect. The laws that have been enacted governing them are complex. They went into effect in the early '60s.

Primarily, the Condominium Act is what we address. That went into effect in 1974, the Property Owners' Act going into effect in 1989, have all been amended each year substantively. It is all that we, as legal practitioners, can do to keep up with what the law is governing community associations. It is a task to try to communicate those changes to the clients that we represent, and the group of lawyers that I'm speaking on behalf of, I think it would be fair to say that we represent a substantial if not a majority of the community associations that have legal representation in Virginia.

My background is president of the national organization called Community Associations Institute, and I see from your speakers, you'll hear from those people, from that organization tonight. There are lawyers on the group that I'm speaking on behalf that have served as president of one or more of the three Virginia chapters of CAI, and I think that we can speak with some experience to say that be cautious about what you impose legislatively, because it is difficult to integrate into an understandable communication for all of the community association leaders to understand.

And then herein lies a practical problem. The leadership of community associations change annually. If we had a perfect system to educate, first to communicate, and through a communication channel educate the leaders who are elected to serve at no compensation, to run these associations as fiduciaries, if we could educate them all one year, the snapshot would be nearly that, that day's snapshot, because within hours, that leadership composition will change. We'll have a whole new set of leaders sitting on these boards of directors who need to be reeducated.

So whatever we do, whatever system we put into place, and my suggestion is that we need to focus on communication and education. We should be spending our time and our money in taking the laws that we have -- we don't need any more laws. We need no more specifics as to how to run meetings. We need no more specifics as to how to reserve for replacement costs. We need to focus our attention and our time and our talents on setting up communication plans to educate the managers, the lawyers, the leaders, the volunteer leaders, the citizens who live in the community associations.

One of the concepts that is very difficult for people in a community association to understand and appreciate, and the lack of understanding and appreciation of this causes sometimes to create a rub between them and their neighbors or them and the Board of Directors or them and management. And that is that when they move into a community association, they've given up some of their freedoms. They have certainly acquired rights, but they have also assumed obligations that they otherwise did not have.

And I think communicating that on a regular basis, so that we have an informed public, don't let me leave out -- I meant to include real estate, the real estate industry in this need to educate and communicate, because from that point where someone says I want to buy in Heavenly Acres, there should be some form of educational

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program and commitment to make sure that that person understands that they are not buying a single-family house in a location that doesn't have any other restrictions imposed upon it other than the local government. They need to understand they're moving into a community association, receiving all these benefits, but also assuming many responsibilities.

And I think through communication and education, we will find that we don't need any more laws on the books to further complicate how to perform the day to day functions of governing and managing these associations. I thank you on behalf of the lawyers that I'm speaking on behalf of for the time. I'm particularly appreciative of being first, although Pia promised me I was going to be able to come in and sit down and listen to what everybody else has to say. But here I am first, and if you have any questions, I'd be glad to take them, and we're going to submit a full report to you for the record. Thank you, sir.

MR. PERRY: Thank you, Mr. Mercer. Our next speaker, who probably should have been the first speaker, is Ralph Gay.

MR. GAY: Thank you, sir, for this opportunity to talk. I'm representing -- my name is Ralph Gay, spelling the last name, G, as in George, a-y, and I'm representing what I hope is the typical homeowner's association, at least in Northern Virginia, if not in the rest of the state.

I'm on the Board of Trustees of Sully Station Two over in Centreville. I've been on the Board for 13 years, and I've been president for the past 11 years. One of the few things that our developer did that I agree with was select a professional management company to work with us. When we took control of the Board back in 1992 from the developer, we started a long-term lasting relationship with this firm.

I have learned over the years that there are very few people that have the time or the energy to get actively involved in their community. We have a standing joke on our Board of Trustees that you can't leave the Board except if you move out of the community, find your replacement, or die. That's the only way you get off the Board. Most of the members are long-term like I am. We have our monthly board meeting. We're lucky if we have four or five homeowners show up until something goes wrong. Then we can pack the room.

We have had our good times. We have had our bad times. We are the landmark case in the Commonwealth of Virginia on assigning parking in homeowners diverse as Sully Station Two. We made it all the way to the Supreme Court and lost. So the key is overall, our community has been very successful, very well managed, and we look with -- we hold our management company in high esteem, but we've had people who have been elected to the Board who have come on with radical ideas. We've all gone off on tangents. Our manager and her supervisor have pretty much kept us on the straight and narrow with their experiences, and we've managed to come together, work out our differences, and keep the community on a firm financial footing. And that's because of the management company and our law firm. We rely heavily, and it's one of the law firms that was mentioned earlier tonight. We rely heavily on their advice.

And I have to agree with the preceding speaker. I

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don't believe that we need any additional regulations. We do need more communication. I believe the statutes that exist now are strong enough and provide enough guidance for a community to offer a property. We know what we can do, what we can't do, but we do live in fear every time the General Assembly comes into Session, because of some of the bills that have made it, been introduced, and maybe passed to one House or the other, but locally, did not pass both Houses to become law.

I think communication, education, but in the 13 years I've been doing it, the people come, the people go. They don't have the time and energy to become well educated in what's happening, and the professional manager is what keeps us on the straight and narrow. I don't know that we have to license them. If we were going to license them, I would question having the Real Estate Board do it, because selling real estate is one thing. Managing a community is a totally different situation, and maybe they tangentially cross because the realtors are selling our properties, but I see kind of a conflict of interest there with the Real Estate Board, if they were going to regulate the folks.

I believe at CAI, the Community Association Institute, with their training program and their certification program, if the homeowners make an educated decision and look for people with the appropriate credentials, they'll come out okay.

Just to give you an idea of the size of our community, we're a little over 1,300 residents, and our annual budget is about \$800,000 a year, and we have close to a million dollars in reserves. And like I said, we've been functioning for 13 years now. We get audited every year by a CPA firm, and we're operating quite well. And I'd like to think that we're the typical association, even though every now and then I hear some real horror stories that hopefully they are the minority.

I thank you for this opportunity to speak to you, and hopefully something positive will come from this.

MR. PERRY: Thank you, Mr. Gay. Our next speaker is Henry Creel.

MR. CREEL: I didn't mean to sign up.

MR. PERRY: You are forgiven. Then how about Deborah Riggins?

MS. RIGGIN: I'll pass. Thank you.

MR. PERRY: Okay. Connie Keane.

MS. KEANE: I pass. I thought we were signing as attendees, not as speakers.

MR. PERRY: No, this is anyone who wishes to speak. Okay. And also, we've had people come in since we've started. If anyone else would like to speak tonight, there's a sign-up sheet, I think, over there. Make sure you sign in, and I will recognize you.

The next person is, maybe, Betty Gillian.

MS. GILLIAM: No, I'll pass. We're attendees.

MR. PERRY: Okay, Evelyn Cantrell? How about Marc McCoy?

MR. MCCOY: I guess I'll jump up there.

MR. PERRY: All right, we have a taker.

MR. MCCOY: Like Mr. Mercer, I didn't expect to be this early either. Good evening, and thank you for the opportunity to speak this evening. My name is Marc McCoy. I'm an executive with Community Management Corporation, and Community Management Corporation has been in business for 34 years, and in the condominium association

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management industry in the Washington area. In fact, it's one of the largest common interests of the management companies in Virginia.

CMC is a member of CAI that has been mentioned earlier, the Community Association Institute, and the company is certified as an accredited association management company, which is CAI's highest designation.

It is my understanding that the General Assembly had directed the Virginia Real Estate Board to review the Old Dominion study, the university study on common interest communities and to make its own review of the issues and to analyze the training and the competence of the professionals, association managers in Virginia. We at CMC recognized this early on, that association management was fundamentally different than real estate sales, as well as rental property management. We train and educate our managers to meet the highest standards of CAI in the management of condominiums in association management.

I believe that you'll find this is the case in most of the larger community association management companies in Virginia. This is a very specialized field, and I think most of us that are in this industry consider ourselves specialists. The question was asked whether professional association managers should be required to take mandatory training and to be licensed in Virginia. I'm not familiar with any serious problems today among communities that are engaged with the professional management company.

In fact, the Old Dominion University study did not identify any concerns about the competency of professional association managers in the study but rather points to the governance problems that arise when the homeowners on the association board have to deal with complex issues without the professional guidance, advice, or choose to ignore the advice and guidance.

As with most things in life, education is the key ingredient to improve community association governance, and CMC is one of the primary reasons that we make education one of the critical services to our communities for not only our own managers, but more importantly, the board members, the committee members, residents, as well as the developers and the builders. We provide orientation programs for new board members and committee members, special seminars and rules, financial statements, and strategic planning.

These efforts to educate and to assist have been well received and have made a big difference in addressing the concerns addressed in the Old Dominion University study. One of my many roles with CMC is to provide consulting services to developers and builders in the creation and setting up of new community associations. I have the unique opportunity to be involved in the early stages in the development of the governing documents, the budgets, and the organizational structure of the association, and it has been my experience that the earlier I can get in and get the homeowners involved in the governance process, the more functional, focused, and positive they become.

This can be accomplished by having the early appointment of a homeowner to the board prior to what the documents call for, and/or through the creation of committees with the same goal of educating the homeowners on the inner workings of the association to understand the roles and responsibilities of both the manager and the

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volunteer, because education provides them an opportunity to learn on the job with the guidance of a professional association management company in order to prepare them for the future, even if they do choose to be self-managed in the future.

Based upon my experience, it would make more sense for Virginia to direct its energy and resources to provide training and assistance to our volunteer homeowner boards than to seek to impose new regulations on professional managers. This assistance can be in the form of providing courses such as CMC provides to its board members and to all community association board members in Virginia. Offer orientation programs for the new board members to provide them some basic information on the nuts and the bolts of governing an association, and giving those board members some guidance on what to look for in a professional manager, what insurance and other protections a management agreement should include.

A homeowner board should have the reasonable assurance that its professional manager is adequately changed and is knowledgeable in the field if the company is accredited by CAC, and to explain those certifications and experience each requires to the association and to its boards. Finally, to provide seminars for board members on basic matters such as budgets, financial statements, and replacement reserves.

If the Real Estate Board takes steps such as these, you will do much to correct the problems which the Old Dominion University study identified without adding a new bureaucracy to the already complex rules and regulations that affect the community associations today. Thank you for the opportunity to speak tonight.

MR. PERRY: Thank you. The next individual is Michael Ulam.

MR. ULAM: I pass.

MR. PERRY: Okay, and I apologize for mispronouncing your last name. Stephen Karikas.

MR. KARIKAS: Karikas.

MR. PERRY: Karikas. Sorry about that.

MR. KARIKAS: No problem. I'll accept any pronunciation of it except one, and I won't tell you what that one is. The name is spelled Stephen, S-t-e-p-h-e-n, Karikas. That's K-a-r-i-k-a-s, and as you can see, I'm not wearing a tie, so I'm not a lawyer or representative of any organization, major organization here, although I'm happy to see some of those faces here, lawyers.

We have a condominium association which can be called condo commandos. As I'm sure that some of you are familiar with that terminology. The gentleman lawyer here said not to make any new laws. I'm not so sure I agree with that, in one particular instance. I would like to -- we have a Condominium Act that I had to understand practically perfectly, even though I'm not a lawyer, because of the situation that's at our condo, and I have dwelt on it in considerable measure.

One of our problems is our bylaws. Now, the Congress of Virginia some time ago passed the part of the Homeowners' Association Act where they said the bylaws of -- not a condo, homeowners' association would drop dead in twenty years. Now, I understand that never was carried through to condos. Am I correct, any lawyers here?

MR. MERCER: Your presumption about the Property Owners' Act being amended is incorrect. There has never been a bill introduced to that effect, and that's not the

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law in Virginia today.

MR. KARAKIS: I read somewhere -- okay, it may not have been passed, but that's not a bad idea, but not in that form. What I would really like to see is some organization that takes a look at the bylaws of homeowners and of condominiums, because there's so much junk in those particular bylaws, and they were written in the past in such a way that almost tie the hands of the owners.

I'll give you an example. We cannot change the bylaws except with 90 percent assent of the ownership. That is an impossibility. There are not that many homeowners in our condo that are interested in doing anything in the condominium. You cannot get more than 70 percent or 50 percent of people to vote.

Changing the bylaws, even though it contains junk, is a practical impossibility. I'd like to see that changed. Now, as far as condominiums are concerned, I've been at the condo for 40 years. I'm now moving, and I have made a specific request from the realtor never to get me near a homeowners' association ever again. Thank you very much.

MR. PERRY: Thank you, sir. Our next individual who is signed up to speak is Crystal Danielson.

Anyone who came in later, or as I said earlier, if you were here and haven't signed up and would like to speak, please feel free at any time during our meeting to sign up.

MS. DANIELSON: Good evening. Thank you. My name is Crystal Danielson. I'm the executive vice president of the Washington Metropolitan Chapter of Community Associations Institute, or as it has been referred to earlier, CAI. The Washington Metropolitan Chapter is the largest chapter in CAI and the oldest chapter in CAI. We have about 60 percent of our membership base is based in Virginia, although we do represent communities in Maryland and D.C. as well.

Our membership includes more than 350 community associations in Northern Virginia and more than 45 community management companies. CAI is dedicated to providing education and resources to board members, homeowners, community managers, and other professionals who serve community associations.

For example, this year, 2005, the Washington Metropolitan chapter will hold more than 50 educational programs. Some of the programs are targeted to board members and homeowners, such as our ABCs, which is a basic course for community association leaders and our on-line course, which is community association leadership development.

Other programs are targeted to community managers and include such topics as facilities maintenance, risk management, financial management, professional information exchanges, and many more. And still others are of interest to all interested parties within the CAI, including our legislative update, effective communication courses, renovations, governance, volunteerism, security, ethics, and the list goes on and on.

All these programs are open to CAI members, as well as nonmembers. In addition to our educational programs, the chapter offers many other resources. CAI has a bookstore with more than 100 publications available, with subject matters including board member responsibilities, governance, building community, disaster management, environmental issues, finances, insurance, leadership,

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legal resources, and more and more and more.

The chapter also publishes Quorum, which is a monthly magazine. Quorum will print more than 60 educational articles this year on a variety of subjects, and additionally, on-line, we have an archive of more than ten years of articles, and those articles are available upon request from the organization.

Both CAI's national organization and the local chapter have very comprehensive web sites with plenty of information about community associations available for members and nonmembers, and we also provide informational brochures to members and nonmembers. A couple examples of those is a brochure called "Rights and Responsibilities," which explains the rights of homeowners and the responsibilities of homeowners, and also the rights and responsibilities of the board as well.

We also have a brochure on resale disclosure that we provide to homeowners, board members, real estate agents, management companies, et cetera, anyone who would be involved in the transaction of purchasing a condominium or a home in a homeowners' association.

CAI provides professional education for community association professionals to enhance their skills and obtain designations which can lead to career advancement. In Northern Virginia, we have 149 certified managers of community associations or the CMCA, 81 association management specialists, or the AMS, and 46 professional community association managers, which is the PCAM. The PCAM designation is the pinnacle of community association management. It is the highest professional recognition nationwide for managers who specialize in community association management.

The requirements for this designation are pretty intense. Candidates must have five years experience. They attend more than 100 hours of classroom time in addition to study time outside of the classroom, and take part in a very comprehensive case study. In Northern Virginia, like I said, we have 46 professional community association managers or PCAMs, which is more than any other chapter in the nation, which shows the commitment that our local community managers have to education and professionalism.

Additionally, there are eight accredited association management companies or AAMCs in Northern Virginia, and five members of the College of Community Association Lawyers. Both of these designations also include a tremendous amount of experience and study.

As you can see, CAI and the Washington Metropolitan chapter are dedicated to providing the resources and education that homeowners in our area need, and I appreciate the opportunity to speak tonight, and we will be providing some more comprehensive information on this, as well as some sample information for the Real Estate Board. Thank you.

MR. PERRY: Thank you, Ms. Danielson. Our next speaker is Frank Short.

MR. SHORT: Good evening. Mr. Karakis, you'll be happy to know that there's at least one lawyer here tonight who is not wearing a tie. I'm not affiliated with CAI. I'm not a member of the trade association. Don't take my word for it that it's a trade association. Take the word of Mr. Lincoln Cummings, who is one of the founders of CAI. If you want to know what CAI is and what they really represent and who they really represent, read

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a book by Professor Evan McKinsey called Privatopia, and you'll read the whole history.

I'm on the Board of Directors of my community association in Fairfax County, and I've been involved with the Board in various committees in my association for almost 20 years, which is about as long as I've been practicing law. Mr. Mercer started the evening by pointing out that, well, community associations are a little bit like governments, but they're really more private. Well, if it looks like a government, and it acts like a government, and as far as you as a homeowner are concerned, it's got more power to affect your life negatively than any government you ever saw, maybe we ought to treat it like a government.

We had some advice on how to treat entities like governments from somebody called Thomas Jefferson. He said in matters of government, place not your faith in men, but bind them down from mischief by the chains of the Constitution. And what we need to do tonight is to send the message that no trade association, no matter how powerful, is going to get away with some of the mischief that has been gotten away with for too long in the Commonwealth of Virginia.

Under the POA, you can be written up for an offense, fined by a kangaroo court. The words due process don't even appear in the POA, ladies and gentlemen. There are no mention of them, and that's not an accident. And if you don't pay this fine, they can sell your house on the courthouse steps by nontraditional foreclosure, and they can do all of this without going before any judge in a court of competent jurisdiction, and that's just how CAI wants it to stay. Don't regulate us, we're private.

I'm going to tell you something we had happen in our year -- in our association just this year. We employed a management company, a CAI affiliated management company that's been through all their ethical training, you see. We pay them a quarter million dollars a year, 25 percent of our total budget. Our contract with the management company requires that they provide disclosure packages. That's what this is supposed to be about tonight, compensation of management companies. The disclosure packages, and we compensate them under our contract. Part of that quarter of a million dollars a year, we compensate them for doing that.

Our contract also requires that the management company maintain all our association books and records, and they're compensated for doing that as well. Now, our management company was never authorized by the Board, and I'm on the Board, to demand any direct payments to the management company by prospective home buyers as part of the disclosure package process. But guess what? I got a call earlier this year from a homeowner who said, you know, what's this thing in the disclosure package about this \$50 transfer fee I'm required to pay? And I say, what \$50 transfer fee? He said, it's right here. He said show me the document that demanded a \$50 transfer fee.

Well, that document could have easily been construed incorrectly to lead a buyer to believe that this payment had been authorized by the association. But ladies and gentlemen, there's nothing in our governing documents. There's nothing in the POA, and there's nothing in our management contract that could be construed to authorize this fee. And when we told the management company to knock it off, this CAI-affiliated management company told

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us something along the lines of no.

And this went back and forth for months, and it wasn't until last week that they sent the notice to every homeowner in the association saying, hey, come see us and get your money back. And even that, they tried to put the burden on the homeowner to prove that they had paid the management -- that they had paid this transfer fee, which is boloney. They've got the documents. They know who paid the fee, and if you didn't keep your HUD One document, they don't want to give you your money back.

Well, we'll take care of that. But again, this is something where we need, in the Commonwealth of Virginia, someplace for homeowners to go, someplace in government that can rein in these abusive associations, including boards of directors, because I've got people on the board with me who don't know the POA from third base and don't want to and don't want -- they want to make up the rules as they go along, and they want to be the very condo commandos that CAI doesn't want any -- all they want to be able to say is, hey, you know what, either move like Mr. Karakis says he's going to do, or go find a lawyer if you can and sue us.

Well, that's unsatisfactory, and people in Virginia deserve better, and we're going to get it, whether CAI likes it or not. Thank you very much.

MR. PERRY: Thank you, Mr. Short. Next speaker, and help me with this, is Shu Bartholomew.

MS. BARTHOLOMEW: My name is Shu Bartholomew. Thank you very much.

MR. PERRY: I was close.

MS. BARTHOLOMEW: It's close. Would you like me to spell it?

MR. PERRY: Please.

MS. BARTHOLOMEW: B-a-r-t-h-o-l-o-m-e-w. My first name is S-h-u.

MR. PERRY: Thank you.

MS. BARTHOLOMEW: Thank you very much for the opportunity to speak. Ladies and gentlemen, I'm here as a homeowner, as an individual and someone who does live in a homeowners' association, but I'm also here because I do -- I host a radio show, a weekly radio show called "On the Commons," and I get a lot of calls from a lot of homeowners across the country who are having problems with their associations, guess what, not just their board members or their managers, but with their associations. There is no where to turn.

There is a national cry for some kind of adult supervision, some place where you, as a homeowner, can go and get some help with your problems. Not everybody has the money to hire an attorney, and even those who do have the money, finding an attorney who is willing or able to come in and represent them against an association in this very individualized part of the law is almost impossible.

A number of years ago, Virginia did in fact have the -- they changed the name to the liaison. The liaison is not providing the adult supervision or the necessary help that initially she was supposed to provide, because I hear from people in Virginia as well, and my first question always is have you contacted the Real Estate Board, and they say yes, we got no where.

So there is definitely some need, a desperate need. As Dave Mercer mentioned earlier, there needs to be a balance, but the balance is very heavily tilted in favor of the association away from the individual. There does

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need to be a balance. The homeowners need to be empowered to be able to protect their homes. This is not all about laws. People did not move into the law. They moved into what used to be known as a home. It is no longer that. It is quite often something that is run by condo commandos, as the gentleman said over there.

Also, to tie it down to what the gentleman said at the California Law Commission right now is review -- the Law Review Commission, the CLRC is also going through an exercise similar to this. They have been looking into an studying associations. A recent comment that they put out was that when they talked to home buyers, home buyers have been asking their realtors to find them something that is not in a homeowners' association. If a homeowners' association exists, it's a negative. They don't really want to buy it.

The problem is in a lot of areas, and especially in Northern Virginia, Fairfax County where we live, about 90 percent of all homes are in an association, because there is a mandate. Fairfax County mandates associations. People have no options. You can't just say, well, this is -- you know, this is a private enterprise, guys. You agreed to it. You signed onto the dotted line, you agreed to all of this. No, you didn't. You had no choice, and as Frank said, you deserve better than that. You deserve to have your government make sure that your rights and your home are protected. Thank you.

MR. PERRY: Thank you. The next person is Mike Shehadi.

MR. SHEHADI: Name is Shehadi, S-h-e-h-a-d-i. Thank you. I am speaking to as you president and CEO of Legum and Norman, one of the largest management firms in the mid Atlantic. We're headquartered in Alexandria, Virginia, and we're a 60-year-old firm, and we have developed a portfolio over the years of some 200 or so associations and some 65,000 homes. Probably 60 percent or so of them are in Virginia.

I was going to have some brief comments on two particular issues. The first one is education, and like many of my competitors, all of our managers are expected to attend CAI certified courses and to become potential -- it is a very desirable distinction that being in our business receives. They go to -- excuse me, they attend several of the classes, and that when they do achieve certain designations, it is something that they covet. Our clients do require our people or request people to also become credentialed.

And there's a certain personal motivation for them as well, because the farther they go with accreditation, the more salary they can command in the industry. So it is -- it's a good thing for people to become educated in our business.

We do pay for their classes, and we encourage all to attend. The higher designations, as I said, the further they advance not only with salary but also within the stature of the organization and the hierarchy of the company.

We also provide considerable supplemental training outside of what the CAI classes offer, technical training on things like roofs and concrete and on balconies and on elevators, and boiler and chiller plants, and so forth, and so on. There's a lot of technical training that's also given in addition to what these individuals received in the CAI program.

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Secondly, I thought I'd talk a little bit about quality of service. We are prideful of our service levels to our clients, and it's not by accident that we've grown as sizeable as we have. We do provide a quality service for our clients, as many of my competitors do as well. And we have taken over the years several properties that were self managed prior to our involvement. They were not affiliated with a professional firm, and in most cases, the change was something that was necessitated because they were not at all managed properly. They did not have good records. They did not have good financial controls. They were volunteer board that evolved over the years, every year changed. There was no continuity. There was no semblance of a quality run organization, and they needed the help of a professional management firm.

And that's part of the services that we provide when we take over properties like this. People that serve on boards are typically all volunteers, and they don't have any real real estate experience. They all, however, are generally hardworking, well-intentioned, desirable -- desirous of doing the right thing kind of people. Some of them are not. Some of them are the condo commandos that we were hearing about, that want to change the world and overthrow the government, and everything is wrong with the world, and so forth and so on.

But for the most part, they are good, hardworking, dedicated people. And with the sizeable portfolio that we have, we see all types of boards, boards that are harmonious and well-run, and they get along with each other and they do the right thing.

But as I listened to the gentleman here from the Sully Station, that's the kind of board that is a genuine flow of the operation, it's consistent year after year, there's money in the bank. There's good procedures and good organizational structure behind it. It's a good, professionally-run organization.

And then on the other end of the spectrum, there's some boards that just absolutely hate each other. I mean, it's one step from anarchy because of the way they have developed over the years. And then there's every -- it's a continuum. There's everything in between.

So the need here is for our boards to become more educated. They have to be able to live and work together. They have to be able to coexist with each other and trust professional management, and then lean on the management to help them as they can, as they need to grow. So that's really all I have to say. Thank you.

MR. PERRY: Thank you. The next individual is James Derrick.

MR. DERRICK: Yes, sir. I'm James Derrick. I live in Watergate at Landmark. I first bought a unit there in 1983. I'm not a member of the association board, but I was the president of the association nine years ago. Most of us who live in Watergate at Landmark expect it to run smoothly as if it were on automatic pilot, and in fact, that's of critical importance to me. Earlier this year, I was away for five months. The Government sent me out to Afghanistan to work. Something like that, I just can't handle a detached home on my own. I need the set up that you have in a condominium association with a professional manager.

We need someone who doesn't make mistakes in assessments. I don't need to get billed for payments that I made last month or find notices about barking dogs when

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I only have cats, something like that. You're here tonight looking into associations and problems. I think the best answer is to look for your solutions at the associations that are well run and see how they do things.

A good manager is one thing that can make an association run smoothly and can improve the quality of an association living for all of us. A while back, I was having dinner with a friend of mine. We were roommates when we were in the Army, and he is now an association manager in Hawaii, and he says that at least the Honolulu area, just about every association manager is required by their board to either have a professional certification or get one as a condition of continued employment.

From talking to other boards in this area, I think it's pretty much the same situation here. The manager is the person with a 24-hour emergency line when the sewer backs up. The manager is the one who keeps the account straight, who investigates the neighbor complaints, who inspects units up for resale, gets the grass mowed, the snow plowed, deals with local governments, police, fire, zoning issues, legal issues.

I found that most managers that I had seen know their job pretty well. Every now and then though, a board member can mess up in the operations of an association by trying to change the way the manager is doing things. It's usually well-intentioned. Usually, put back in order pretty quickly, but it doesn't work, but it shows how little practical experience most of our board members have and how much we depend on managers' experience to make things work.

If you look at the board members, they are a very broad variety in professional backgrounds, but very little in the way of real property management. It looks to me like the Real Estate Board is getting ready to make one of those changes in how things work. I'm sure it's well-intentioned, but not sure the Real Estate Board has the practical experience in managing associations not to mess things up.

If it does get messed up, it's going to be difficult to put things back in order. A while back, I sold my unit that I was in and bought another. But in selling my unit, I talked to my real estate agent, and his one recommendation was to get rid of some of the clutter in my unit so it shows better for sale. Very good, solid, professional advice. But it's one thing to be a specialist in how to sell units quickly and another thing to be a specialist in managing a large property, two somewhat related but very, very different skills.

A good community association manager has very little in common with a good real estate salesman. A good leasing agent doesn't necessarily make a good community manager. A guy that can sell my uncle's garage may not know how to calculate a replacement reserve for a common parking area.

The fact that more and more associations are using professional managers rather than managing the association out of a board member's garage is a good thing, not a bad thing. The fact that Virginia has a bunch of people who really do know how to manage a community association is a good thing, not a bad thing. The fact that there are more and more people doing community management as the number of community associations increases is a good thing.

We should be careful of change and make sure that we're changing the problem that needs changing and that

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there aren't better ways of doing it. It's hard enough to keep our associations running without the real estate board coming in and blowing up a storm. Please don't fix what's not broken. Where problems exist, look at the well-run associations for how things can be done. Thanks for giving me a chance to speak my piece.

MR. PERRY: Thank you. The next person that I have listed is Charles Waddell.

MR. WADDELL: I'm going deviate just a little bit from the noticed topics. I'm going to submit in writing my comments to the topics that you are here on. I do want to make a couple of comments on associations and HOAs and management companies. The gentleman before me mentioned look at what's working in a good association or good company, management company.

I thought about mine, and it's characterized by good communications, necessary controls, coordination, education and information, and one real key element, accountability.

I'm here to speak to the Real Estate Board on something that's a problem in Northern Virginia, probably statewide, something that's happening in Herndon and something that we're doing something about. Introduce myself, I'm Charlie Waddell. I'm wearing a suit, not a lawyer. For the past 11 years, I've lived in beautiful downtown Herndon. For the past ten years, I've been president of the Dumbarton Square Homeowners' Association. It's a job that's got some interesting challenges. I do for and I do with my people.

For the past four years, I've been chairman of the Herndon Community Association Coalition. I'm going to speak tonight on the Herndon Community Association Coalition, and then I'll skip to the problem, and that is excess occupancy.

First a little bit about the group that I represent. Herndon has about 26 HOAs and about half of those are members in the Herndon Community Association Coalition. We also have several members who are management company representatives and at least one practicing lawyer. Our coalition meets bimonthly to deal with mutual problems and mutual concerns of the member associations and to share information and ideas. Our coalition is also a forum to learn about town programs and initiatives and to provide community input on these matters to the Town Council and to the Planning Commission and to town staff, and the town manager.

Within the Town of Herndon, our coalition is active, concerned, and whose members meet, like I mentioned, with the town staff, Planning Commission, and the Town Council on a regular basis. Our association has hosted or cohosted a number of town hall type meetings.

In September 2003, our coalition hosted a town meeting on excess occupancy that was well attended by the citizens that we serve. In July of this year, together with the Herndon Planning Commission, our coalition hosted a community seminar on the Town's zoning ordinance rewrite project. This seminar was also well attended by a broad spectrum of the community. Actually, it was broadcast live on HCTV, Herndon television channel 23.

Mr. Bill Marr, a member of our coalition and a practicing attorney has conducted workshops. I mentioned information and education. That's one of our goals. Mr. Marr has conducted workshops on important issues facing our community. One of those community workshops was

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titled Homeowner Association Board of Directors, roles and responsibilities. When we get a new board member on there, sometimes he does not have any experience, but he's got the desire. We want to channel that desire into doing the right thing. We want to let him know what he can do, what he cannot do, what he can do legally, what he should not do.

Another one of the workshops conducted by Mr. Marr was amending and enforcing your association documents. An earlier gentleman mentioned there was some problems with his that need to be fixed. This is one of the seminars that would have given boards an idea of what they can do. 90 percent for a change or for ratification or something is a whole lot. We go around getting proxies in my HOA.

A third workshop conducted by Mr. Marr was something that's probably affecting a lot of the neighborhoods in Northern Virginia, possibly yours. This seminar was titled dealing with overcrowding issues within the HOA, what you can do as an HOA to deal with that.

To me, as a citizen of Herndon, it's readily apparent that the efforts of our coalition have been effective. The Herndon Town Council has heard our voiced concerns on excess occupancy. We've seen the Council pass a zoning ordinance text amendment increasing the civil and criminal fines for zoning violations, making illegal boarding houses a criminal violation, rather than just a civil violation, and increasing the civil penalties for those additional violations.

The Herndon Town Council recently passed a zoning ordinance text amendment that clarified and strengthened the occupancy limitations and the definition of family. This was in response to our coalition's concerns for the need for stricter enforcement, the need for stricter enforcement tools to deal with enforcing excess occupancy violations.

Also in response to our coalition's efforts, the Town has added a staff member on the zoning enforcement team to deal with excess occupancy cases. The issue that I'm here to talk about tonight is excess occupancy. What is excess occupancy? Simply put, it occurs when too many people occupy a dwelling, or when the family definition found within our zoning ordinance, and probably yours too, is violated. Over occupancy results in parking problems, poor property maintenance, overutilization of municipal facilities, and abuse of open-space areas.

Neighborhoods experience overcrowded houses, are poor environments for raising children, experience a variety of other health and safety issues. Excess occupancy is not a phenomenon that's unique to Herndon, nor was it confined to Northern Virginia. It's a challenge that many neighborhoods in the state face.

Our neighborhoods are not places to operate rooming houses. They're places to live as a family, places where you want to live and feel safe. I've had a number of discussions with the Town of Herndon zoning officials and with several former zoning officials in other counties, Montgomery County, Maryland, being one of them, and I'll share with you some of the information that I've received from some of them.

The suspected causes of excess occupancy, most of the causes of excess occupancy appear to deal with socioeconomic status of the individuals. Approximately 15 percent of the homeowners who admitted to being in violation of Herndon's excess occupancy ordinances during

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the past year acknowledged, they were unable to afford the mortgage.

Research has also revealed that at least a portion of the immigrant population is easily drawn into purchasing homes that are beyond their means, leaving them to struggle to make ends meet. Low incomes, poor credit ratings and a lack of consumer education programs for first-time home buyers have created financial difficulties for individuals who end up with high mortgage payments and must resort to renting rooms to make the mortgages.

Last year, more than 30 properties in Herndon were identified as renting rooms in violation of our ordinances. It appears that a number of those violators are being forced to sell their houses because they can't afford them, and they cannot legally rent rooms. That should not be happening. That should not be allowed or encouraged to happen.

Investigations into excess occupancy violations in Herndon reveal a large percentage of violators lack an understanding or general knowledge of the applicable town codes and ordinance. Another phenomenon that seems to be accompanying the excess occupancy we're noticing are instances of predatory lending practices. I've had discussions with some of the Town Council officials about their cases, and some investigations are yielding situations where the excess occupancy complaint involves victims who might be victims of predatory lending.

Certain property owners have also indicated that they have received instruction from real estate agents to rent rooms or to construct bedrooms in their basements in order to afford the houses or to be able to pay for the houses that they really cannot afford. Examples of predatory lending practices have been reported by homeowners during investigations by the Town of Herndon into the excess occupancy complaints.

Property owners have also admitted to town officials that the real estate agent encouraged them to fraudulently complete their loan application. Some lending institutions knowingly lend more money to a borrower than he can afford to pay without resorting to illegally renting out the rooms.

Property maintenance code violations in Herndon have been closely associated with the excess occupancy -- excess occupied properties. If property owners are having difficulty in paying their monthly mortgages, do you think they've got money to maintain the property? We're seeing that they don't.

There has been legislation adopted in several states and municipalities throughout the United States aimed at preventing and criminalizing predatory lending practices. The Commonwealth of Virginia must pass similar legislation. These protections are needed by some of our most vulnerable citizens. And also by working with local governments, the real estate community must assist in several ways.

First as real estate professionals, you must help your clients become better educated, better educated as to what a homeowners' association is and also what it's not. There is also a need to help your clients better understand what they can and cannot do with their property, and also real estate professionals need to become knowledgeable about their applicable codes and ordinances within a municipality where the sale is occurring. Real estate professionals need to ensure that

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homeowners are absolutely aware of what they're buying into, the sales contract and all applicable laws. And sales -- real estate professionals need to avoid encouraging homeowners to violate zoning occupancy codes in order to afford a home.

Thank you for affording me the opportunity to speak tonight. I also want to leave with you a copy of my remarks, as well as Herndon's -- a brochure that Herndon puts out on zoning ordinance and how it applies to the homeowners. And I've also done a little research, found something that the Fanny Mae Foundation has put out called Patterns and Trends in Overcrowded Housing. Thank you.

MR. PERRY: All right. Thank you. Mr. Waddell was the last speaker that I have on my list. Is there anyone else that wishes to speak?

MR. WEATHERSPOON: Yes.

MR. PERRY: Please do.

MR. WEATHERSPOON: My name is Joe Weatherspoon. I've been a resident of Northern Virginia since March of 1970, but I also happen to be a resident of the Smith Mountain Lake area. I'm president of the Association of Lake Area Communities, which consists of 70 associations. 68 are self-managed. So the community of management companies do not have a hold on everything.

These communities vary in size from 12 to 330 lots, and some -- it was mentioned that the POA Act was a one size fits all document. There's a lot of difference in managing and running a 12 home lot or association and one that's 330 units or one that is managed.

Of these 70 units that we -- 70 associations that are members of ALAC, we have two condominiums. The rest of them are all single-family homes. A couple of things mentioned, overcrowding. We have a slight problem of overcrowding, and that is short-term rentals in the summertime, where you have 18 to 20 people staying in a three-bedroom house, when they are there in violation of the county ordinances. But who -- when they start asking who is responsible for correcting this, it falls back on the association, that we are -- the association has to be the one that reports it, the one that monitors it, and does most of the work.

There is a lot of difference in running an association in Fairfax County and Prince William County and when you get down to scenic Bedford County, Franklin County, and some of the others. In fact, some of the people in those counties don't have the slightest idea what an association is.

So when we start talking about the regulations and so forth that we need, the Board needs to look at the difference in running a small association and a large association. One other thing that we have a problem with is that the developers need some guidance in developing covenants and restrictions. Here in Northern Virginia, you've got a lot of -- like I say, we got a lot of blue suits, so there's a lot of expertise.

When you get down south in beautiful Southwest Virginia, it's a different story. A lot of the covenants that are handed over to a board when they come in have no relationship whatsoever to the actual association or the environment that it has to operate in. Developers and the association need to get together long before the developer walks in, he has the hotdogs and cokes and says, we'll have a nice lunch, and then here's your documents. You have the association.

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I have witnessed five different associations where the members of the association had to take over the operation. They had no choice. The developer says here it is. If you don't want it, you don't have it. If you don't take it today, then we'll just keep running it until somebody comes along.

So there needs to be some set up, some cooperation to where the association and the developer can get together and also in the developments of the covenants. I have seen ten different associations in that area that the covenants are exactly the same. And they must have a good word processing program with all on, and they print it out. We had one association that the covenant stated there had to be 100 percent approval to change the covenant. You know, Jesus Christ couldn't get a hundred percent, let alone the members of the association.

So there needs to be guidelines that are realistic. Another problem, you have a Planning Commission and a Board of Supervisors that approve a zoning ordinance that is in direct conflict with the covenants of an association, and when that matter is brought up, the answer that you get is, well, we don't enforce your covenant. We don't have anything to do with them. If you don't like what we did, then you have to take it to court. We have two or three different associations that are in that predicament right now.

So what you have in Northern Virginia is a lot different than what we get down in Southwest Virginia. Of course, we've got the benefit of living in beautiful Bedford County, but there are differences in associations, and there are differences in how they're managed. As I mentioned, 68 of my 70 are self-managed, and they're all managed by retirees, too. That is one benefit, except that most of the retirees say we came to play golf; we didn't come to work.

But in the changes to the POA, and there's some changes and revisions that are needed, but the Real Estate Board needs to recognize that there are differences in the management of a 12-unit association and a 330-unit association.

MR. PERRY: Thank you, Mr. Weatherspoon. Is there anyone else wishing to speak tonight? Yes?

MS. GILLIAM: My name is Betty Gilliam, spelled G-i-l-l-i-a-m, and I'm a homeowner. I'm here tonight as a homeowner. I do serve on a board. I've served on other boards, and I've been very active in condominiums where I have owned property.

I'm a little concerned about the emphasis on "professional" managers when I'm not sure what professional management means. I know CAI has a whole group of classes, and you can take those classes and pass, and then you get your, you know, alphabet after your name, and that's all really good. But there is a big difference between the credentials and actual performance, and I would like to know what CAI has done or what management companies are doing, for that matter, in the area of performance management, where you specify what some of the duties would be, measures, indicators of performance, and I would -- one of my pet peeves is when I hear someone on the management side saying, oh, the board is micro-managing.

I feel like the question should be asked, a self-assessment of that professional manager, why am I saying that? What is it that I'm not doing? Why must I get so

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much added advice from the board? Now, let's don't be naive about this. There are people on the board who do come in with an agenda and want to do the management themselves and always think they know best.

But I think that is an issue to be dealt with separately. I really would like to see, before you go get carried away with mandating professional status, credentials provided by whomever, that we be careful to specify the areas of expertise that that person should have, not necessarily a label of professionalism, but rather a good, solid experience.

I think your notion of education I've heard talked about for boards and people like that is very real. I think no one should serve on a board if they can't read the financial statement and if they can't understand the basic finances of the organization. So there are a lot of skills and knowledges that we ought to have, but I'm a little leery of the label. Thank you.

MR. PERRY: Thank you. Anyone else? Well, I would like to thank each and every one of you tonight for your comments. The record of this public hearing will be kept open until Friday, July 26, 2005, and written comments will be accepted through 5 o'clock p.m. of that day. Written comments can be received via mail or via e-mail. Our e-mail address is PROREG, which stands for property registration, at DPOR.Virginia.Gov.

If you did not get an opportunity to speak tonight and you decide later that you would like to give oral comment, or if you know of anyone else that would like to give oral comment, there is one additional opportunity, which is a week from today in Richmond at DPOR's offices at 3600 West Broad Street. It will be starting at 10 o'clock in the morning from 10:00 to 2:00 p.m.

This hearing is now closed.

* * * * *

(The hearing in the above-referenced matter was adjourned at 8:20 p.m.)

CERTIFICATE OF COURT REPORTER

I, COLLEEN M. VANCE, a Certified Verbatim Reporter, do hereby certify that I took the stenographic notes of the foregoing proceedings and thereafter reduced the same to typewriting; that the foregoing is a true record of the testimony given by said witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were held; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

COLLEEN M. VANCE, CVR-CM
Certified Verbatim Reporter

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